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Document Description: Petition for review by the Office of Petitions

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Attorney Docket No. P70650US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Knut ADERMANN et al.

Application No. 10/539,627

Patent No. 7655629

Filed: September 19, 2005

Issue Date: February 2, 2010

For PEPTIDES AND THEIR USE FOR THE TREATMENT OF HIV INFECTIONS

**REQUEST FOR  
RECONSIDERATION OF INCORRECT WYETH PATENT TERM ADJUSTMENT  
RECALCULATION [35 USC(b)(3)(B)(ii)]  
AND  
REFUND OF FEE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The decision on the request for recalculation of patent term adjustment in view of *Wyeth*, mailed May 13, 2010, incorrectly recalculated the patent term adjustment "to 450 days," as explained in detail below. Submitted herewith are the requisite \$200 fee, Patent Term Adjustment History obtained online from the PTO Private PAIR database (one page) for the "450" days PTA (as recalculated), and copy of Notice of Allowability of the subject patent application mailed December 21, 2008.

Specifically, the PTO erred in its determination of the time period under 37 CFR 1.703(b) at "301" days (the PTA "36 Months" entry in the attached patent term adjustment history), by using as the Rule 703(b)(4) time period—to be excluded from the 703(b) period of adjustment—the 291 days filing the Notice of Appeal, on November 17, 2008, and mailing of the Notice of Allowance, on September 4, 2009; whereas, the correct 703(b)(4) time period is only 35 days, i.e., the number of days from filing the Notice of Appeal (November 17, 2008) to the mailing of the aforesaid Notice of Allowability—"an action under 35 U.S.C. 132"—on December 21, 2008, i.e., on the attached patent term adjustment history, the Date of the "Examiner's Amendment Communication"—"attention being directed to the bottom, right of the Notice, which states: "Mail Date "20081221," and page 2 of the Notice, which contains "Examiner's Amendment."

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Patent No. 7655629  
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Thus, the recalculation excluded 256 days (291-35) more than should have been excluded—as the (b)(4) number of days. Adding back the excess 256 days (incorrectly excluded) effects 557 days (301+256) as the correct 703(b) period of adjustment and, correspondingly, the correct total PTA *Wyeth* recalculation of **706** days (450+256), to which the subject patent is entitled.

**Refund of the \$200 fee** (submitted herewith) is requested in view of the foregoing explanation. In other words, the PTO offered, at no charge, to recalculate—under *Wyeth*—the originally accorded PTA, which patentees accepted, and so had a right to expect that the *Wyeth* recalculation would be done correctly, which it was not—moreover, it was not to the extent that the incorrect recalculation resulted in a PTA that was 50 days fewer than originally accorded. With all due respect, it is unjust, unfair, and inequitable to offer a recalculation free of charge, with the *proviso* that, should the recalculation be done incorrectly—especially to the extent of effecting 50 fewer days than originally accorded—it will cost the patentee \$200 to fix the PTO mistake.

For the foregoing reasons, grant of the correct PTA of 706 days and \$200 fee refund are in order.

Respectfully submitted,



William E. Player  
Reg. No. 31,409

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Tel. (202) 638-6666  
Fax (202) 393-5350  
Date: June 7, 2010  
WEP/mwb

Attachments (4 pages)

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PATENT & TRADEMARK OFFICE  
U.S. DEPARTMENT OF COMMERCE

<b>Patent eBusiness</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Secured Patent Application Information Retrieval</li> <li><input type="checkbox"/> <a href="#">XML Download</a></li> </ul>	<p>10/539,627 PEPTIDES AND THEIR USE FOR THE TREATMENT OF HIV INFECTIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>Selection</th><th>Application Data</th><th>Transaction History</th><th>Image File Wrapper</th><th>Patent Term Adjustments</th><th>Continuity Data</th><th>Foreign Priority</th><th>Fees</th><th>Published Document</th><th>Address &amp; Attorney/Agent</th><th>Supplementary Content</th><th>Assignment</th><th>Display References</th></tr> </table>	Selection	Application Data	Transaction History	Image File Wrapper	Patent Term Adjustments	Continuity Data	Foreign Priority	Fees	Published Document	Address & Attorney/Agent	Supplementary Content	Assignment	Display References																																																																																																																																																																																																																							
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**Notice of Allowability**

Application No.	Applicant(s)
10/539,627	ADERMANN ET AL.
Examiner	Art Unit
MAURY AUDET	1654

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to and now reversing the Advisory Action of 12/12/08, following amendment approval.
2.  The allowed claim(s) is/are 29-34 and 37.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_.
4.  Examiner's Comment Regarding Requirement for Deposit of Biological Material
5.  Notice of Informal Patent Application
6.  Interview Summary (PTO-413),  
Paper No./Mail Date Attached.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

/Cecilia Tsang/  
Supervisory Patent Examiner, Art Unit 1654

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### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bill Player, Applicant's Representative, on 12/19/08.

#### **IN THE CLAIMS**

In claim 1, line 1, the term "medicament" has been deleted and --composition-- inserted therein.

In claim 1, lines 2-4 and 5-6, the phrases "having biological activity against HIV infection" and ", a nucleic acid coding for the compound, or an antibody binding specifically to the compound" have been deleted, without prejudice.

New Claim 37 has been added:

37 (New): A nucleic acid, wherein said nucleic acid encodes the peptide of claim 29.

#### ***Conclusion***

Claims 29-34 and 37 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAURY AUDET whose telephone number is (571)272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecelia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 12/21/2008

/Cecilia Tsang/  
Supervisory Patent Examiner, Art Unit 1654